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STATUTORY INSTRUMENTS

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**2003 No. 1574**

**HEALTH CARE AND  
ASSOCIATED PROFESSIONS  
HEALTH PROFESSIONS**

**The Health Professions Council (Investigating  
Committee) Procedure Rules Order of Council 2003**

<i>Made</i>	- - - -	<i>13th June 2003</i>
<i>Laid before Parliament</i>		<i>17th June 2003</i>
<i>Coming into force</i>	- -	<i>9th July 2003</i>

At the Council Chamber, Whitehall, the 13th day of June 2003  
By the Lords of Her Majesty's Most Honourable Privy Council

Whereas in exercise of the powers conferred on it by articles 22(4), 26(2) and (3) and 41(2) of, and paragraph 18 of Schedule 1 to, the Health Professions Order 2001<sup>(1)</sup>, and of all other powers enabling it in that behalf, the Health Professions Council has made the Health Professions Council (Investigating Committee) (Procedure) Rules 2003 as set out in the Schedule to this Order:

And whereas by articles 41(1) and 42 of the Health Professions Order 2001 such Rules shall not come into force until approved by order of the Privy Council:

Now, therefore, Their Lordships, having taken the Rules into consideration, are pleased to, and do hereby, approve them.

This Order may be cited as the Health Professions Council (Investigating Committee) (Procedure) Rules Order of Council 2003 and shall come into force on 9th July 2003.

*A. K. Galloway*  
Clerk of the Privy Council

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## SCHEDULE

### THE HEALTH PROFESSIONS COUNCIL (INVESTIGATING COMMITTEE) (PROCEDURE) RULES 2003

The Health Professions Council, in exercise of its powers under articles 22(4), 26(2), (3) and 41(2) of and paragraph 18 of Schedule 1 to the Health Professions Order 2001<sup>(2)</sup> and of all other powers enabling it in that behalf and after consulting in accordance with article 41(3) of that Order, hereby makes the following rules:

#### Citation and commencement

1. These Rules may be cited as the Health Professions Council (Investigating Committee) (Procedure) Rules 2003 and shall come into force on 9th July 2003.

#### Interpretation

2. In these Rules—

“allegation” means any allegation of a kind mentioned in article 22(1) of the Order or any matter which is treated as an allegation by virtue of action taken under article 22(6) of the Order;

“Chairman” means the chairman of the Committee or, in relation to any proceedings conducted by a panel appointed by the Committee in accordance with paragraph 19(6) of Schedule 1 to the Order, the chairman of that panel;

“Committee” means the Investigating Committee of the Council;

“complainant” means a person by whom an allegation has been made to the Council;

“health professional” means a person whose name appears in the register against whom an allegation has been made and includes a person whose registration is currently suspended;

“the Order” means the Health Professions Order 2001;

“register entry allegation” means an allegation of the kind mentioned in article 22(1)(b) of the Order or any matter which is treated as such an allegation by virtue of action taken under article 22(6) of the Order;

“Solicitor” means any solicitor appointed by—

- (a) the Council to represent it at a hearing before the Committee which relates to an allegation against a health professional; or
- (b) the Registrar to represent him at such a hearing in respect of a register entry allegation against a health professional;

or Counsel instructed to represent the Council or Registrar at any such hearing; and

“standards of conduct, performance and ethics” means the standards of conduct, performance and ethics established by the Council under article 21(1)(a) of the Order.

#### Service of Documents

3.—(1) In these Rules a reference to the sending of a notice or other document to any person is a reference to it being sent—

- (a) in the case of the Council, its committees or the Registrar, to the offices of the Council;
- (b) in the case of a health professional, to his address as it appears in the register; and

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(2) S.I. 2002/254.

(c) in all other cases, to the last known address of that person.

(2) All communications to be sent for the purposes of these Rules may be sent by post and any such communication shall be treated as having been sent on the day that it was posted.

### **Investigation of allegations**

4.—(1) Where an allegation is referred to the Committee it shall, at the same time that it sends the notice referred to in article 26(2)(a) of the Order to the health professional, provide him with a copy of the standards of conduct, performance and ethics.

(2) Any written representations to be submitted to the Committee under article 26(2)(a) of the Order shall be sent before the end of the period of 28 days beginning with the date on which the notice referred to in that article is sent to the health professional.

(3) In considering an allegation the Committee may seek such advice or assistance as it sees fit but may not—

- (a) interview the health professional unless he consents; or
- (b) take account of any document or other material which the health professional has not had the opportunity to comment upon.

(4) Where the Committee has found that the health professional has failed to comply with the standards of conduct, performance and ethics, the Committee may take that failure into account in its consideration of an allegation but such failure shall not be taken of itself to establish that the fitness to practise of the health professional is impaired.

(5) Subject to rule 8, the Committee shall meet in private to consider an allegation other than a register entry allegation.

(6) Subject to paragraph (7), in determining whether there is a case to answer the Committee may take account of any other allegation made against the health professional within a period of three years ending on the date upon which the present allegation was received by the Council.

(7) An earlier allegation in respect of which a Practice Committee previously determined that there was no case to answer may only be taken into account in accordance with paragraph (6) if, when the health professional is notified that no further action is to be taken in connection with the earlier allegation, the notification contains a statement that the case may be taken into account in the consideration of any subsequent allegation.

### **Notice of register entry allegation**

5. Where the Council refers a register entry allegation to the Committee the Council shall send notice of the allegation to—

- (a) where known, the employer of the health professional or any other person with whom he has an arrangement to provide professional services;
- (b) where known, any other body by which the health professional is authorised to practise a health or social care profession; and
- (c) the Secretary of State, the Scottish Ministers, the National Assembly for Wales and the Department of Health, Social Services and Public Safety in Northern Ireland.

### **Register entry allegations: Procedure**

6.—(1) Where a register entry allegation is referred to the Committee it shall, in addition to the notice referred to in rule 4(1), send a notice to the health professional—

- (a) informing him—

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- (i) that he may, before the end of the period of 28 days beginning with the date on which the notice is sent, request that a hearing be held, and
  - (ii) that, even if he does not request a hearing, the Committee may hold a hearing if it considers it to be desirable; and
- (b) informing him of his right to be heard, and to be represented, at such a hearing.
- (2) The Registrar may, and at the direction of the Committee shall, be a party to any proceedings.
- (3) If the health professional has requested that a hearing be held or the Committee determines that it would be desirable to hold a hearing the Committee shall fix a day on which it is to hear the case and send the parties notice of the day, time and venue for the hearing.
- (4) The Committee shall not fix a date for the hearing which is before the end of the period of 28 days beginning with the day on which the Committee sent the notice referred to in paragraph (3) to the health professional.
- (5) A health professional may be represented in any proceedings by any person, whether or not legally qualified, except a member of the Council or any of its committees or a person employed by the Council.
- (6) The Committee may invite any person who, in its opinion, has an interest in the proceedings to submit written representations and any such representations shall be sent to the Committee before the end of the period of 14 days beginning with the date on which the invitation is sent to that person.

### **Preliminary meetings**

- 7.—(1) The Committee or the Chairman may hold a preliminary meeting in private with the parties, their representatives and any other person it or he considers appropriate if such a meeting would, in its or his opinion, assist the Committee to perform its functions.
- (2) At any meeting which he conducts under paragraph (1) the Chairman may give directions under article 32(3) of the Order and, with the agreement of the parties, take any action which the Committee would be competent to take at such a meeting.

### **Conduct of hearing**

- 8.—(1) At any hearing in respect of a register entry allegation—
- (a) the proceedings shall be held in public unless the Committee is satisfied that, in the interests of justice or for the protection of the private life of the health professional, the complainant, any person giving evidence or of any patient or client, the public should be excluded from all or part of the hearing;
  - (b) subject to sub-paragraph (c) the rules on the admissibility of evidence that apply in civil proceedings in the appropriate court in that part of the United Kingdom in which the hearing takes place shall apply;
  - (c) the Committee may hear or receive evidence which would not be admissible in such proceedings if it is satisfied that admission of that evidence is necessary in order to protect members of the public;
  - (d) where the health professional has been convicted of a criminal offence, a certified copy of the certificate of conviction (or, in Scotland, an extract conviction) shall be admissible as proof of that conviction and of the findings of fact upon which it was based;
  - (e) the Committee may require evidence to be given on oath or affirmation and for that purpose may administer oaths or affirmations in an appropriate form;
  - (f) the Committee may adjourn the proceedings from time to time as it thinks fit.
- (2) In paragraph (1)(b) the “appropriate court” means—

- (a) the Court of Session in Scotland;
- (b) the High Court of Justice in Northern Ireland; and
- (c) the High Court of Justice in England and Wales.

(3) The Committee may require any person (other than the health professional) to attend a hearing and give evidence or produce documents.

(4) At the beginning of any hearing the Chairman shall explain to the parties the order of proceedings which the Committee proposes to adopt and, unless the Committee determines otherwise, the parties shall be heard in the following order—

- (a) the Chairman shall invite the Solicitor to present the case against the health professional and to adduce the evidence in support of that case;
- (b) any witness called by the Solicitor shall be examined by him, may be cross-examined by the health professional or his representative, may be re-examined by the Solicitor and may be questioned by the Committee;
- (c) at the conclusion of the case against the health professional the Chairman shall invite the health professional or his representative to address the Committee and to adduce evidence as to the health professional's fitness to practise;
- (d) any witness called by the health professional shall be examined by him or his representative, may be cross-examined by the Solicitor, may be re-examined by the health professional or his representative and may be questioned by the Committee;
- (e) the Chairman shall invite the Solicitor to address the Committee again;
- (f) the health professional or his representative may then address the Committee for a second time.

#### **Absence of the health professional**

9. Where the health professional is neither present nor represented at a hearing in respect of a register entry allegation, the Committee may nevertheless proceed with the hearing if it is satisfied that all reasonable steps have been taken to serve the notice of the hearing under rule 6(3) on the health professional.

#### **Extension of time limits**

10. The time for—

- (a) requesting that a hearing be held specified in rule 6(1)(a); or
- (b) sending written representations specified in rule 4(2) or 6(6),

may be extended by the Chairman where he is satisfied that in all the circumstances it is reasonable to do so.

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Sealed with the common seal of the Health Professions Council on 6th June 2003.

L.S.

*Norma Brook*  
*Marc Seale*  
PresidentRegistrar

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#### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order, which is made under the Health Professions Order 2001, approves Rules made by the Health Professions Council in respect of the procedure of its Investigating Committee in considering allegations made against a health professional to whom the Health Professions Order 2001 applies.